

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAN ALEC WEITH,

Plaintiff,

v.

GOVERNOR GAVIN NEWSOM, et
al.

Defendants.

Case No. 1:22-cv-01256-JLT-SKO

**ORDER TO SHOW CAUSE WHY THE ACTION
SHOULD NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO OBEY COURT
ORDER AND LOCAL RULES AND FAILURE TO
PROSECUTE**

(Doc. 3)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Jan Alec Weith, proceeding *pro se*, filed this civil action on September 30, 2022. (Doc. 1.) Plaintiff also filed an application to proceed without the prepayment of fees, but the form application was not complete. (*See* Doc. 2.) The application contained several deficiencies and contained unintelligible handwriting. (*See id.*)

On October 6, 2022, the Court issued an order denying without prejudice Plaintiff's application to proceed without the prepayment of fees and directing Plaintiff to either file an amended application, completed and signed, or pay the \$402.00 filing fee for this action, within twenty-one days. (Doc. 3.) Plaintiff was cautioned that the failure to comply with the Court's order would result in a recommendation that this action be dismissed. (*See id.*) More than twenty-one days have passed, and Plaintiff has failed to file an amended application or to pay the filing fee.

Further, when served at Plaintiff's address of record, the October 6, 2022, order was returned as undeliverable on October 17, 2022. Local Rule 183(b) provides that:

1 A party appearing in propria persona shall keep the Court and opposing parties
2 advised as to his or her current address. If mail directed to a plaintiff in propria
3 persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff
4 fails to notify the Court and opposing parties within sixty-three (63) days thereafter
5 of a current address, the Court may dismiss the action without prejudice for failure
6 to prosecute.

7 L.R. 183(b). Although more than sixty-three days have passed since the order was returned as
8 undeliverable, Plaintiff has not contacted the Court to provide his current address, request an
9 extension, or to otherwise explain his lack of compliance with the order.

10 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, “[f]ailure of counsel or of
11 a party to comply with . . . any order of the Court may be grounds for the imposition by the Court
12 of any and all sanctions . . . within the inherent power of the Court.” Local Rule 110. “District
13 courts have inherent power to control their dockets,” and in exercising that power, a court may
14 impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of Los Angeles*,
15 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to
16 prosecute an action or failure to obey a court order, or failure to comply with local rules. *See, e.g.*
17 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with
18 an order requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130
19 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d
20 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

21 Accordingly, Plaintiff is **ORDERED** to show cause **within twenty-one (21) days** of the
22 date of service of this order why the action should not be dismissed for Plaintiff’s failure to comply
23 with the Court’s order and Local Rules and failure to prosecute. Alternatively, within this same
24 time period, Plaintiff may pay the \$402.00 filing fee for this action, file an amended application to
25 proceed without the prepayment of fees, or file a notice of voluntary dismissal. The Court further
26 CAUTIONS Plaintiff that, if he fails to take action within twenty-one (21) days of the date of
27 service of this order, the Court will recommend to a presiding district court judge that this action
28 be dismissed in its entirety.

1 The Court DIRECTS the Clerk to send a copy of this Order to Plaintiff at his address listed
2 on the docket for this matter.

3
4 IT IS SO ORDERED.

5 Dated: **December 29, 2022**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE